



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/528,842

07/26/2005

Gallus Schechner

P/2107-267

8538

2352 7590 06/02/2008
OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

DEES, NIKKI H

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,842	Applicant(s) SCHECHNER ET AL.	
	Examiner Nikki H. Dees	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>23 March 2005, 21 September 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-24 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kropf et al. (DE 10063945 A1) in view of Greenberg et al.

(5,980,955). [The published DE 10063945 is priority document for Kropf et al. (US 2003/0219388 A1). The US document is used below as an English language equivalent to the above German document. A translation of the priority document will be provided with a subsequent office action.]

3. Kropf et al. teach a dental adhesive film comprising a poorly soluble calcium salt [0009]. Chewing gums are taught as another means of introducing active ingredients to tooth and gum surfaces [0003]. The slightly water soluble calcium salts are preferably salts of hydroxyapatite or fluoroapatite [0015]. The calcium salts are preferably from 10-300 nm in size, and are in the form of rod-shaped crystals [0016]. The film produced comprises about 1% of the composite material of the invention [0089]. The calcium salt is preferably provided in combination with a protein. Proteins may include casein, collagen, albumin and gelatin [0020], [0059]. The proteins may also function as

surface-modification agents by adsorbing to the nanoparticles of calcium and preventing agglomeration of the particles [0018].

4. Kropf et al. go on to teach sweeteners for use in their invention including sucrose, lactose, fructose [0054]. They also teach intense sweeteners such as aspartame, thaumatin and sodium cyclamate [0054], inclusion of which would result in a substantially sugar-free product.

5. The invention of Kropf et al. may further comprise fluorine compounds such as sodium fluoride or tin fluoride [0047]. The invention may also comprise flavors and other fillers [0049]-[0055].

6. Kropf et al. are silent as to the composition of the particular coating layers of the chewing gum.

7. Greenberg et al. teach a coated chewing gum product wherein the coating contains a poorly water-soluble salt of calcium (Abstract).

8. The coating material of Greenberg et al. may further comprise sweeteners such as dextrose, maltose, erythritol, xylitol, hydrogenated isomaltulose (isomalt) and other polyols alone or in combination. High intensity sweeteners are also taught for use in the invention (col. 5 lines 61-62). Further, there may be layers of different primary coating materials (col. 4 lines 21-32).

9. Greenberg et al. state that each component of the coating may be applied in a single layer, or in a plurality of layers that are the same or different. Preferably, about 30 to 60 layers are applied (col. 7 lines 4-13).

10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the insoluble calcium salt as taught by Kropf et al. in the chewing gum composition of Greenberg et al. in order to result in a chewing gum product containing nanoparticle-sized calcium in a form that has significant residence time in the mouth in order to improve the dental hygiene of the user, or mineralize the enamel or dentine of the user in the presence of the calcium particles. All of the claimed elements were known in the prior art at the time the invention was made. One of ordinary skill could have substituted the nano-sized calcium particle as taught by Kropf et al. for the insoluble calcium salt in the chewing gum invention of Greenberg et al. with the predictable result of a chewing gum containing the nano-sized calcium particles. Undue experimentation would not have been required, and there would have been a reasonable expectation that the resultant chewing gum would have been effective for its intended purpose of delivering the calcium salts to the surface of the teeth and gums.

11. Claims 25-35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenberg et al. (5,980,955) in view of Kropf et al. (DE 10063945 A1). [The published DE 10063945 is priority document for Kropf et al. (US 2003/0219388 A1). The US document is used below as an English language equivalent to the above German document.]

12. Greenberg et al. teach a method for producing a chewing gum comprising coating a gum core with a coating syrup comprising a slightly water-soluble calcium salt (Abstract). The coating syrup may further comprise sweeteners (col. 5 lines 40-56). The chewing gum core is coated by at least one coating step. Preferably, about 30 to

Art Unit: 1794

60 layers are applied (col. 7 lines 4-13). After coating, the core is dried (col. 7 lines 28-36). The gum core may also be coated with a dry powder of sweetener after coating with a liquid syrup (col. 6 lines 63-66). The powder may also comprise calcium carbonate (col. 7 lines 1-3). The calcium salt is taught in an amount preferably from 1.5 to about 5% in the coating layer (col. 2 lines 64-67).

13. Greenberg et al. are silent as to the calcium salt of their invention being apatite, as well as in the nanometer-size range.

14. Kropf et al. teach a poorly water-soluble calcium salt in the nanometer-size range (10-300 nm) [0016]. The calcium may be in the form of hydroxyapatite or fluoroapatite [0015].

15. One of ordinary skill in the art at the time the invention was made would have been able to utilize the nanometer-size calcium particles as taught by Kropf et al. in the method of making chewing gum as taught by Greenberg et al. The calcium of Kropf et al. is poorly-water soluble, as is called for in the invention of Greenberg et al.

Substitution of this calcium would have yielded the predictable result of a chewing gum containing a poorly water-soluble calcium salt. The resultant method would have been expected to produce a chewing gum containing the active remineralizing calcium compound of Kropf et al. without undue experimentation and with a reasonable expectation of success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nikki H. Dees
Examiner
Art Unit 1794

Application/Control Number: 10/528,842

Page 7

Art Unit: 1794

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794